



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK

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PUBLIC

CBR
file
03-715

December 18, 2003

Hugo L. Vioria, Physician
REDACTED

Re: Application for Restoration

Dear Dr. Vioria:

Enclosed please find the Commissioner's Order regarding Case No. CP-03-10 which is in reference to Calendar No. 19037. This order and any decision contained therein goes into effect five (5) days after the date of this letter.

Very truly yours,

Daniel J. Kelleher
Director of Investigations

By: _____
REDACTED
Gustave Martine
Supervisor

cc: Robert Asher, Esq.
295 Madison Avenue – Suite 700
New York, New York 10017

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OFFICE OF PROFESSIONAL
MEDICAL CONDUCT

The
University of the
Education  State of New York
Department

IN THE MATTER

of the

Application of HUGO L. VILORIA
for restoration of his license to
practice as a physician in the State of
New York.

Case No. CP-03-10

It appearing that the application of HUGO L. VILORIA, Apt. 213, 385 Throop Avenue, Brooklyn, New York 11221, to practice as a physician in the State of New York, was revoked by action of the Board of Regents effective August 16, 1988, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on October 9, 2003, it is hereby

ORDERED that the petition for restoration of License No. 119488, authorizing HUGO L. VILORIA to practice as a physician in the State of New York, is denied.

IN WITNESS WHEREOF, I, Richard P. Mills,
Commissioner of Education of the State of New York for
and on behalf of the State Education Department, do
hereunto set my hand and affix the seal of the State
Education Department, at the City of Albany, this 12th
day of December, 2003.

REDACTED

 Commissioner of Education

Case No. CP-03-10

It appearing that the license of HUGO L. VILORIA, Apt. 213, 385 Throop Avenue, Brooklyn, New York 11221, authorizing him to practice as a physician, having been revoked by action of the Board of Regents effective August 16, 1988, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition and having agreed with and accepted the recommendations of the Peer Committee and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on October 9, 2003, it was

VOTED that the petition for restoration of License No. 119488, authorizing HUGO L. VILORIA to practice as a physician, be denied.

Case number
CP-03-10
September 19, 2003

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Physician License

Re: Hugo L. Vloria

Attorney: Robert S. Asher

Hugo L. Vloria, REDACTED
petitioned for restoration of his physician license. The chronology of events is as follows:

- 03/05/74 Issued license number 119488 to practice as a physician in New York State.
- 03/13/87 License summarily suspended by Department of Health. (See "Disciplinary History.")
- 06/04/88 Regents Review Committee recommended that license be revoked.
- 06/17/88 Regents voted revocation.
- 08/16/88 Commissioner's Order effective.
- 06/14/89 First application for restoration submitted.
- 06/08/90 Peer Panel restoration review.
- 07/30/90 Report and recommendation of Peer Review Panel.
- 12/12/90 Report and recommendation of the Committee on the Professions.
- 02/22/91 Board of Regents voted to deny restoration.
- 05/01/91 Commissioner's Order effective.
- 06/02/94 Second application for restoration submitted.
- 02/09/96 Peer Panel restoration review.
- 05/28/96 Report and recommendation of Peer Review Panel.

- 01/06/97 Report and recommendation of Committee on the Professions.
- 04/29/97 Board of Regents voted to deny restoration.
- 06/24/97 Commissioner's Order effective.
- 01/07/99 Third application for restoration submitted.
- 07/10/01
07/25/01
04/18/02 Peer Committee restoration review.
- 04/23/03 Report and recommendation of Peer Committee. (See "Report of the Peer Committee.")
- 07/02/03 Committee on the Professions restoration review.
- 09/19/03 Report and recommendation of Committee on the Professions. (See "Report of the Committee on the Professions.")

Disciplinary History. (See attached documents.) On March 13, 1987, the Commissioner of Health determined that Dr. Vioria's continued practice of medicine constituted an imminent danger to the health of the people of the State of New York and issued an order summarily suspending his license. Dr. Vioria was charged with professional misconduct in that he willfully harassed, abused and/or intimidated a patient physically and verbally (first through third specifications), that he engaged in conduct in the course of his practice as a physician which evidenced moral unfitness to practice the profession (fourth through sixth specifications), and that he practiced the profession fraudulently (seventh specification). The first two charges related to sexual conduct regarding a minor patient and the latter charge to altering a related patient record.

In April 1987, a hearing was conducted by the State Board for Professional Medical Conduct in regard to the issues of imminent danger and professional misconduct. Prior to final deliberations and a review of final written arguments, the Hearing Committee concluded that Dr. Vioria's practice of medicine did not constitute an imminent danger to the health of the people of the State of New York. The Committee recommended unanimously that the summary order be vacated. On June 1, 1987, the Commissioner of Health rejected the findings, conclusion, and recommendation of the Hearing Committee on imminent danger and ordered that the summary suspension be continued.

In June 1987, the Hearing Committee found and concluded that Dr. Vioria was guilty of the professional misconduct charges, either wholly or in part, and recommended that his license be revoked. On July 10, 1987, the Commissioner of Health recommended to the Board of Regents that the findings, conclusions and recommendation of the Hearing Committee be accepted in full. In its report of June 4,

1988, the Regents Review Committee unanimously recommended that Dr. Vioria's license be revoked. The committee recommended that Dr. Vioria be found guilty of the third and sixth specifications to the extent indicated by the Hearing Committee and recommended further that he be found not guilty of the remaining charges. In giving consideration to the summary suspension, the Committee recommended that Dr. Vioria be allowed to petition for restoration after a waiting period of nine months, instead of one year. On June 17, 1988, the Board of Regents voted to revoke Dr. Vioria's license, and the order was effective August 16, 1988.

On June 14, 1989, Dr. Vioria submitted his first application for restoration of his physician license. The Peer Review Panel met on June 8, 1990. In its report, dated July 30, 1990, the Panel recommended that Dr. Vioria's application for restoration of his physician license be denied. In its report, dated December 12, 1990, the Committee on the Professions recommended that Dr. Vioria's application be denied. On February 22, 1991, the Board of Regents voted to deny Dr. Vioria's application for restoration, and the Commissioner's Order became effective May 1, 1991.

Dr. Vioria submitted his second application for restoration on June 2, 1994. The Peer Review Panel met on February 9, 1996. In its report, dated May 28, 1996, the Panel recommended that the revocation of Dr. Vioria's license be stayed and that he be placed on probation for ten years under specified terms, including the requirement that he always have a female third person present whenever he treats or examines any female and within the first three years of probation he complete 100 hours of continuing medical education, including at least one course in physician-patient relationships and another course in the general practice of medicine or internal medicine. In its report, dated January 6, 1997, the Committee on Professions recommended that the application be denied. The Committee opined that it did not believe that Dr. Vioria had real recognition of what occurred and had not accepted full responsibility for his actions. Further, the Committee found insufficient rehabilitation to warrant restoration given the seriousness of the misconduct and the age of the victim. On April 29, 1997, the Board of Regents voted to deny the application for restoration.

On January 7, 1999, Dr. Vioria submitted his third application for restoration of his physician license.

Recommendation of the Peer Committee. (See attached "Report of the Peer Committee.") The Peer Committee (Kase, Cohen, Robinson) met with Dr. Vioria on July 10, 2001, July 25, 2001 and April 18, 2002 to review his application for restoration. In its report, dated April 24, 2003, the Committee recommended, by a vote of two to one, to deny Dr. Vioria's application for restoration.

Recommendation of the Committee on the Professions. On July 2, 2003, the Committee on the Professions (Ahearn, Templeman, Earle) met with Dr. Vioria to review his application for restoration. Robert S. Asher, Esq., his attorney, accompanied him. Dr. Vioria presented the Committee with documentation of 70.25 hours of continuing medical education credits completed since May 2002.

The Committee asked Dr. Vioria to explain what occurred that led to the loss of his license and what was now different. He replied, "I had an improper conversation with

a minor patient." The Committee asked him to explain why it was improper. He said that it was an "ethical problem." He explained that the minor patient asked for a medical certificate for school absences. He indicated that she "came to make a deal as a favor." Dr. Vioria told the Committee that she told him if he gave her the medical certificate he could receive sexual favors from her. He said, "I did not answer - yes or no. I kept doing my job. I thought I should give the certificate if she was sick during a week." He indicated that he felt he had to go further to find out if she really had been sick. Dr. Vioria said that he now realizes he should have told her at the beginning "I could never do that. She was a minor." The Committee asked, "Why didn't you." He replied, "She came insisting. She was trying to tempt me with sex. It was my mistake. I enjoyed the conversation, as I never had a 14-year-old girl talking to me that way. I continued with the conversation." Dr. Vioria reported that he continued with the conversation "until the moment I was arrested by the police." He stated, "I allowed and participated in that improper conversation."

The Committee noted that Dr. Vioria said that he was sexually stimulated by the 14-year-old girl and asked him what assurances he could provide that there would not be future sexual stimulation. He stated that what happened to him could be compared to what happened to the nation on September 11. He said, "I was destroyed. I understood I needed help." He reported that he consulted lawyers, a psychiatrist, a psychologist, church counselors, and completed a course in ethics. He said that he has learned how to now act in such situations and learned why his "approach" at that time was wrong. Dr. Vioria stated that he never had any medical ethics courses in his professional education. He reported that he has learned he must recognize if an ethical problem exists, decide what method is most applicable to solve the problem, follow the course of action to see what he could do, and analyze the solution selected. He said he has learned that if he cannot handle the situation, he needs to call an appropriate authority. The Committee asked, "Do you need courses to tell you it was wrong?" He replied, "I didn't know what course of action to take. I didn't know how to control the situation."

Dr. Vioria told the Committee that he has had conferences with psychiatrists and psychologists and everyone told him that as a man "my reactions were normal." He said, "I need to control myself." From his counseling with his priest, Dr. Vioria said he has learned he needs to be more careful in the future. He stated that if his license were restored, he would have a medical assistant with him at all times.

In response to the Committee's inquiry, Dr. Vioria said that he had seen the patient three times previously even though he normally did not see children. He reported that the first time he saw her was at the request of a pharmacist who indicated the girl did not like her pediatrician. He indicated she came with her mother for treatment of an injured finger which she hurt playing basketball. He said that the x-rays were normal. Dr. Vioria said that the girl's second appointment with him was to pick up a medical certificate for a summer job. He indicated that he did not examine her at that time but did give her the results of the x-rays from the first examination. He told the Committee that, subsequently, the girl's mother called and said the girl would be coming in alone for an appointment but his secretary said that she couldn't. He reported that the girl came to the office with her mother and brother for the third appointment. Dr. Vioria

said that the girl was never really sick. He also indicated that the medical records reflected that an uncle had sexually abused the girl.

The Committee asked Dr. Vioria if anything sexual occurred during any of the prior visits he described. He said that one time when she was leaving the room, the girl touched him on his ankle, but that he told her "This is a medical office. You have to respect this." On the day of the alleged misconduct, Dr. Vioria said that he was only working half of the day. He reported that when he was seeing his last scheduled patient for that day, the girl "appeared in my medical office."

The Committee noted that this was Dr. Vioria's third application for restoration and that each time he has presented a different picture of the 14-year-old girl. In 1990, the Committee noted that he said she was delusional and that he only wanted to humor her. In 1997, the Committee noted that he admitted he was sexually aroused by the girl and cited cultural differences as the main factor in misinterpreting his actions and the fact that the conversation may not have been appropriate in American culture. The Committee noted that Dr. Vioria was now saying that it was his fault and that he had made a mistake. The Committee asked why there appeared to be different accounts. He replied that, in 1990, he did not have a lawyer and "the normal reaction is to find someone else to blame." He reported that this was the tactic used by his lawyer in the criminal proceedings. He said that he was unprepared for the meeting and believed that he had no psychological problems. Dr. Vioria explained that, in 1997, he had had counseling for six years and was closer to the church. The Committee asked Dr. Vioria what he has learned from his counseling with his most recent psychologist and how he could apply what he has learned if similar situations arose. He replied that he has developed coping skills. He said he has learned "more opinions as a man." He reported that his psychologist advised him to be careful with minors and not to take patients that were minors. In addition, he reported that the psychologist indicated he must carefully weigh any situation. Dr. Vioria said that his psychologist helped him mentally, by helping him learn how to relax with all the problems in life. He said that he provided the "grounds for me to behave."

The Committee noted that he had been out of practice for 15 years and asked why he wanted his license restored. He replied, "It's very difficult to say." He said that mentally, he feels he's in good condition to practice his profession. He stated, "It's a question of honor. I want to live with honor and dignity all the years I still have to live." He indicated that he has been living in poverty and wants to improve his income and not be a burden to the State. He said, "I want to be useful to myself and the community."

Mr. Asher told the Committee that there is no evidence that Dr. Vioria is a pedophile. He said that the excerpts of the taped conversation appearing in the record were taken out of context. He said that Dr. Vioria has learned coping skills with the help of his psychologist so that he could either switch the conversation to where he is the aggressor or get out before it reaches an inappropriate level. He said that there are cultural influences that came to light during his counseling although Dr. Vioria might not look at it as a cultural background factor. Mr. Asher said that the psychologist believed that Dr. Vioria felt that, with his Latin background and temperament, he couldn't "back down" with a woman. He said that Dr. Vioria has evolved over the period of time since he lost his license and has accepted that he was wrong.

When asked if he had anything further to say, Dr. Vioria told the Committee that when the girl showed up in this office he had a dilemma. He said that he made the decision to "treat her like she was beautiful, etc., so that she would leave. I was wrong." He indicated that in Spanish culture, you "use love to make people feel good." The Committee asked, "Did you enjoy what she did?" Dr. Vioria replied, "I was treating her like I loved her. When I realized she took it seriously, I fell back."

The overarching concern in all restoration cases is public protection. Education Law §6511 gives the Board of Regents discretionary authority to make the final decision regarding applications for the restoration of a license to practice as a physician in New York State. 8NYCRR §24.7(2) charges the Committee on the Professions (COP) with submitting a recommendation to the Board of Regents on restoration applications. Although not mandated in law or regulation, the Board of Regents has instituted a process whereby a Peer Committee first meets with an applicant for restoration and provides a recommendation to the COP. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that there is a compelling reason that licensure should be granted in the face of misconduct so serious that it resulted in the loss of licensure. There must be clear and convincing evidence that the petitioner is fit to practice safely, that the misconduct will not recur, and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner. It is not the role of the COP to merely accept as valid whatever is presented to it by the petitioner but to weigh and evaluate all of the evidence submitted and to render a recommendation based upon the entire record.

The COP agrees with the majority opinion of the Peer Committee that Dr. Vioria has not presented a compelling case for the restoration of his license at this time. Both the Peer Committee and COP note that Dr. Vioria's statements as to what occurred in his office with the 14-year-old girl and why it occurred have been inconsistent during his three attempts to have his license restored. Based on those inconsistencies and his demeanor during its meeting with him, the COP does not find his explanation credible. The COP notes that neither Dr. Vioria nor his psychologist adequately addressed the question of why this misconduct occurred. Dr. Vioria provided no evidence that he has clearly identified the root causes of his misconduct and made the necessary behavioral changes in his life to make certain such misconduct would not recur. The COP finds that he continues to provide varying explanations to fit the circumstances. Without such a clear-cut understanding of the root causes of his misconduct, the COP is not convinced the public would be safe were Dr. Vioria's license restored. Dr. Vioria said that he has developed coping skills based on an ethics course and his therapy with his psychologist. As noted by the Peer Committee majority, the approaches suggested by Dr. Vioria to handle similar situations in the future were "scattershot" and "disparate," which left those Committee members "unsatisfied that applicant truly understands what happened in his office on that day and how he might deal with a similar situation in the future."

Therefore, after a careful review of the record and its meeting with him, the Committee on the Professions voted unanimously to concur with the recommendation of the Peer Committee majority that Dr. Vioria's application for restoration of his physician license in the State of New York be denied at this time.

Kathy Ahearn, Chair

Leslie Templeman

Steven Earle



The University of the State of New York

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF PROFESSIONAL RESPONSIBILITY
STATE BOARD FOR MEDICINE

-----X

In the Matter of the Application of

HUGO L. VILORIA

REPORT OF
THE PEER
COMMITTEE
CAL. NO. 19037

for the restoration of his license to
practice as a physician in the State of
New York.

-----X

Applicant, HUGO L. VILORIA, was authorized to practice as a
physician in the State of New York by the New York State Education
Department by the issuance to him of license number 119488 on
March 5, 1974.

PRIOR DISCIPLINARY HISTORY

On June 17, 1988 the Board of Regents voted to revoke
applicant's license to practice medicine in the State of New York,
with the Commissioner of Education's order implementing the vote
of the Board of Regents becoming effective on August 16, 1988.

Applicant's revocation of licensure was based upon his having
been found guilty of two specifications of professional misconduct
of the seven he was charged with. Applicant was found guilty of
professional misconduct in that he willfully verbally harassed a

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patient and that he evidenced moral unfitness in the practice of the profession of medicine by this conduct. These charges relate to applicant's conduct with a 14-year old female patient (referred to in the proceedings as patient A) of his on January 21, 1987.

Quoting from the report of the Regents Review Committee in this matter, dated June 4, 1988, "(applicant's) actions on January 21, 1987 constituted verbal (emphasis supplied) harassment, abuse and intimidation and because, by formulating the intent to engage in a sexual encounter with Patient A, applicant's conduct evidences moral unfitness to practice medicine."

There was no finding that applicant had physically forced patient A to have sex or that his conduct constituted physical (emphasis added) harassment, abuse and/or intimidation of the patient.

Quoting further from its report, the Regents Review Committee related more details of what transpired between applicant and his patient.

"Early in the conversation on January 21, 1987, (applicant) twice told patient A that he missed her. He then asked patient A why she did not come to his office. When patient A asked applicant whether he liked what they were doing the other times, applicant replied yes of course. Later applicant stated we can go somewhere and indicated he would pick her up. Applicant declared to this 14-year old girl 'I want to give you everything. All my love. I like you'. After falsely telling patient A that he no longer had a wife, applicant twice inquired of patient A about a certain type of sex act."

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These comments were recorded by patient A while wearing a wire supplied to her by the police in furtherance of an investigation being conducted by them.

The Board of Regents found that applicant should have immediately terminated the conversation relating to sex, and that the aforementioned conduct constituted the willful verbal harassment, abuse and/or intimidation of patient A.

Subsequent to the actions of the Board of Regents in 1988 revoking applicant's license, applicant submitted two separate petitions for the restoration of his license. Following hearings, these petitions were denied in 1991 and 1997, respectively.

Unrelated to the aforementioned disciplinary proceedings, but made a part of the record herein, was applicant's criminal conviction on May 21, 1991 by a guilty plea to the charges of Criminal Possession of a Weapon in the 4th Degree and Endangering the Welfare of a Child. On July 8, 1991 applicant was sentenced to three years' probation, 600 hours of community service, and was ordered to seek psychiatric counseling. This plea and sentence was entered in Supreme Court of Bronx County, New York.

Additionally, applicant reported that during divorce proceedings with his wife she alleged that he tried to hit her with a pipe, for which he was arrested in 1994. This resulted in his being found guilty of an offense, which is a lower level conviction than a misdemeanor.

He was also involved in an incident in 1996 involving his car which required the intervention of the police. This resulted in applicant's being convicted of disorderly conduct and sentenced to

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a conditional discharge and a fine of \$400.

Petition for Restoration

As part of applicant's restoration petition, he appended supporting affidavits, letters from treating health professionals (along with a release for each of their records), evidence of continuing medical education (CME), a curriculum vitae and letters showing proof of community service.

In addition to the above there was additional material submitted by the Office of Professional Discipline (OPD), including the report of the Investigations Division of OPD, and a letter dated September 16, 1999 from Anne Saile, Director of the Office of Professional Medical Conduct (OPMC).

Peer Committee Meeting

On July 10, 2001, July 25, 2001 and April 18, 2002, this Peer Committee met to consider this matter. Applicant appeared before us personally and was represented by an attorney, Robert S. Asher, Esq. Stephen J. Lazzaro, Esq. appeared on behalf of the Prosecutions Division of OPD.

Following opening statements by counsel for each party, applicant presented a number of witnesses on his behalf. The first to testify was Father Robert M. Robinson, who is the pastor of the Saint Patrick Parish in Long Island City, New York.*

Father Robinson first met applicant in about 1994 or 1995, when applicant was seeking to find a priest who could get to know

* Father Robinson's testimony came before opening statements due to his schedule. Please see the transcript of July 10, 2001 for further details.

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him. Father Robinson described himself as being shocked by applicant during their initial talk. Applicant related to him that he had an inappropriate conversation with a patient who was a young girl and that the girl had made improper gestures with her mouth, which prompted applicant to start asking improper questions.

Because applicant was seeking spiritual advice, he returned to Father Robinson on a regular basis. He said that at first applicant did not show remorse for his actions or what he called perfect contrition, which meant, according to his religious tradition, that one is sorry because one has done wrong.

Eventually applicant was recommended by Father Robinson to join a spiritual group. This group engaged in serious prayer and study. After a time applicant came to admit that he had done wrong with the girl and that he had failed her.

In addition to his bible study, applicant also performed favors for study group members such as driving them to doctors' visits or to their homes from religious meetings.

Father Robinson is satisfied now that applicant has achieved perfect contrition, and, at least from a moral and spiritual perspective, is qualified to practice medicine again.

In addition to his testimony, Father Robinson submitted both a letter and affidavit on applicant's behalf.

The next witness to appear on applicant's behalf was Dr. Raul Pohorille. Dr. Pohorille met applicant when both were both practicing in the Bronx some time ago. He considers himself a friend of applicant's.

He understood the reason for applicant's loss of licensure to be applicant's involvement in a "very, very compromising conversation with a patient...".

Dr. Pohorille discusses medicine on an occasional basis with applicant and believes that applicant has kept up to date with practice issues sufficient for a general practice. He supports applicant's petition to obtain his license again.

On cross-examination by Mr. Lazzaro, Dr. Pohorille testified that his understanding of the event which led to applicant's revocation, as told to him by applicant, was that the young female patient provoked him sexually with conversation. He also believed that applicant was trying to escape the situation and that he didn't know the conversation was being recorded.

Dr. Pohorille said that he would recommend applicant to friends involved in a group practice if he were to be relicensed, and would try to keep an eye on his practice in an indirect way.

Dr. Roger Solawa, a clinical psychologist, next appeared on applicant's behalf. Dr. Solawa has known applicant as his psychologist for some 8 or 9 years and has treated him for a total of some 95 to 100 hours. Applicant first came to him as the result of a court-mandated treatment program.

In the period of time in which he treated applicant, Dr. Solawa believes that applicant came to realize that his conversation with patient A was inappropriate. He attributes this lapse by applicant to his failure to use even a reasonable degree of his coping skills at a time when applicant was experiencing great personal stressors. Another contributing factor in

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applicant's response to patient A would be cultural differences in his background from those of his adopted country's culture.

He has since learned appropriate coping skills and does not believe that applicant is in any way hindered either cognitively or intellectually. Another stabilizing factor is applicant's involvement in his church, which Dr. Sowala views as sincere, and not merely a prop to support his restoration application.

He does not believe that applicant needs any more ongoing therapy and that he has integrated into his life the things they worked on during their sessions together. Dr. Sowala also thinks that from a psychological standpoint applicant is prepared to practice again and has recognized the need to keep abreast of the profession through his attendance at CME courses.

In response to questions from this panel, Dr. Sowala testified that he did not think restrictions on applicant's practice would be necessary.

The next to testify was applicant. Applicant began his direct testimony with a recitation of his background and medical education.

He then discussed the events of January 21, 1987, when patient A came to his office. He testified that he always believed that what he did was improper, and denied that he had a sexual relationship with the girl. He recognizes that he hurt many people with his conduct, beginning with the girl, and including his family and profession.

When asked how he would respond if a similar situation arose today, applicant replied by saying that he was a "religious man..

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(and would) decide everything with the Ten Commandments always in my mind. I would treat every patient like a brother that needs help...I would be more careful making a decision."

When pressed on what specific action he would take, applicant said he would call 911. He would then tell 911 that he has a big problem in his office, and when they arrived he would explain it to them. Of course, he added, he would have an office employee come in as a matter of routine for female patients. If that were not possible he would try to get permission to tape whoever came to his office.

He expanded upon these remarks by saying, with respect to patient A, that she "make (sic) a very lousy story with big, fat lies...she lie in front of the grand jury."

Applicant continued by discussing his CME and his conversations with other physicians regarding practice issues.

If relicensed, applicant sees himself as being involved in a group general practice.

Applicant testified about his association with Father Peter Bretzinger and the Communio Sanctorum, which is a religious movement that provides spiritual direction to its members. They are involved in bible study, teaching, ministering to the needs of the poor, and other activities.

His involvement arose out of what he described as his "many years of suffering and trying to have my license restored...I understand that maybe...human justice sometimes is not really the best thing." He expressed the belief that perhaps divine justice is better.

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This religious affiliation has also helped him to deal with the pressure he has felt since losing his license. Father Bretzinger could not appear at the hearing because he was traveling on church business, but he did submit a letter on applicant's behalf.

Applicant concluded his direct testimony by saying that he would like to return to a general practice catering primarily to adults in an institutional setting, or at least a setting where he worked with other physicians. Applicant said that he has some offers from other physicians, but nothing specific.

When asked on cross-examination if there was a violation of trust between patient and doctor, applicant said there was a violation on both sides, in that both her actions and his were wrong.

Applicant maintained in his testimony that she was in effect trying to entrap him and that his question to her, "do you know how to do a blow job", could be interpreted in a different way due to the inflection in his voice. He said that the question came from his mouth without "any intention or nothing".

Applicant was then asked about whether he believed he actually needed psychological counseling or in fact sought treatment in order to obtain his license. Applicant replied that in his opinion the various legal authorities involved in his criminal case--the assistant district attorney, the judge, his defense attorney--were in effect not qualified to evaluate his mental health. He said that he told his attorney that he didn't have any psychological problem.

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On the other hand, he saw value in seeing a mental health professional in order to help him through his depression and anxiety over losing his license.

Mr. Lazzaro then returned to the subject of what applicant would do if confronted with a situation like that which led to the loss of his license. Applicant again said that he would call 911 because they would provide immediate help, more so than his secretary, and he could explain to them what is going on in his office.

He also described an alternative response in which he would tell the patient to leave, or do something more serious if he or she didn't, and then call for help from his assistant or secretary.

Applicant concluded his cross-examination by stating that he is both educationally and ethically qualified to return to practice.

In response to panel questions, applicant reflected on the evolution of his thinking over time, and specifically since his last licensure restoration petition some years ago. Applicant said that since that time he has raised his awareness through discussions with friends, doctors, lawyers and spiritual advisors about why he committed his act. He realizes that his whole problem stems from his improper conversation with patient A, regardless of who provoked it, and that it violates the law.

Further, "as a human being and as a Christian, I think that I did wrong. I behaved like a sinner. I sinned because of my thinking, sinned because of my words, and sinned because I did not

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do what I was supposed to."

The Department in its closing remarks stated the criteria involved in determining whether a license should be restored: re-education, rehabilitation and remorse. Mr. Lazzaro left it up to the province of the panel to determine whether applicant's re-education is sufficient, but noted that applicant has not practiced medicine since the late 1980's.

With respect to rehabilitation, the Department cited the testimony of applicant and several of his witnesses to show that applicant lacks the insight to properly appreciate the nature of his misconduct, and is only interested in saying whatever it takes to regain his license.

Mr. Lazzaro concluded by saying that applicant did not present such evidence as would compel this panel to grant the restoration of his license.

Applicant's counsel, Mr. Asher, then gave a closing statement. Mr. Asher argued that applicant has been convicted only twice of misdemeanors, once for endangering the welfare of a minor and once for possession of an unlicensed gun, both of which occurred more than 15 years ago.

Applicant has not excused his acts and admits that he acted improperly. Without minimizing his misconduct, Mr. Asher noted that applicant did not sexually touch this woman, but did react wrongly when patient A acted in a provocative manner.

Applicant is sincere in his remorse and rehabilitation, as attested to by applicant's witnesses such as Father Robinson and Bretzinger, and as evidenced by his immersion in church

HUGO L. VILORIA (19037)

activities. Father Robinson in particular believes that applicant has achieved perfect contrition for his actions, which means truly understanding and feeling sorry for what he had done wrong.

Applicant recognizes the harm he has done to patient A, his family, and his profession. He has rehabilitated himself through community service, exceeding the required 600 hours to be performed by completing to this point some 1000 hours. Applicant has also seen three different mental health professionals, each one of which has written in support of applicant's petition.

Mr. Asher acknowledged that applicant's difficulty in expressing himself in English presented a problem for him before the panel.

And, despite applicant's having been away from the practice of medicine for a number of years, he has taken a substantial amount of CME. If the panel feels that restrictions on or conditions attached to applicant's practice are necessary, applicant would be willing to accept those terms.

Finally, Mr. Asher asked the question of how long should one be punished, and when can one be forgiven. He asserted that applicant has done all the things needed to practice safely, ethically, morally and in the best interests of his patients.

Recommendation

In evaluating applicant's petition for licensure, we apply the aforementioned criteria of remorse, rehabilitation and re-education. Additionally, we are charged with the responsibility of safeguarding the public's health, safety and welfare.

We also note in reviewing this petition that the legal burden

is on applicant to submit such evidence as would "compel" the exercise of discretion in his favor. Matter of Jablon v. Board of Regents of Univ. of State of N.Y., 271 App. Div. 369, 373, 66 N.Y.S. 2d 340, aff'd. 73 N.E. 2d 904. Taking the above into consideration, it is the recommendation of two members of this panel, Dr. Seymour Cohen and Benjamin Robinson, Esq., that applicant has not fulfilled these requirements and that therefore his petition for restoration be denied. It is the recommendation of the chairperson, Dr. Nathan Kase, that applicant's request for restoration be granted, with certain terms of probation to monitor his practice.

At the outset we all agree that applicant appears to be sincerely remorseful for his actions. Where we diverge is our respective beliefs regarding applicant's rehabilitation and re-education. It is the opinion of the aforementioned two panel members that although applicant is remorseful, his testimony indicates a conflicted view of his conduct which precludes true insight on his part.

In particular, applicant gave varying accounts of how he viewed the behavior of patient A. At times he portrayed her as the innocent victim of his misguided actions; at others he indicated that she lied in her testimony in the criminal case, was trying to entrap him, and only using him to avoid being punished for her absences from school.

Similarly, applicant proposed a number of scattershot approaches to avoid a repeat of his misconduct. He said that in the future he would variously call 911, ask the patient to leave

HUGO L. VILORIA (19037)

if she acted improperly, have a female assistant in the room with him and so on. These disparate approaches leave us unsatisfied that applicant truly understands what happened in his office on that day and how he might deal with a similar situation in the future.

Further, applicant was involved in several incidents subsequent to the one which led to the loss of his license which call in to question applicant's judgment and ability to respond appropriately to stressful situations.

Finally, despite applicant's many hours of CME, we are concerned that he is not currently qualified to practice medicine at this time due to his many years away from the profession.

For all these reasons it is the recommendation of Dr. Cohen and Mr. Robinson that applicant has not presented such evidence as would compel the granting of his application for restoration licensure.

It is the recommendation of the chairperson that applicant has satisfactorily met the criteria cited previously and deserves to have his license restored subject to certain terms and conditions.

Dr. Kase believes that applicant is genuinely remorseful for his misconduct and that a repeat of this behavior is highly unlikely for a number of reasons.

First, applicant's active involvement in his church, and his devotion to his religious studies would preclude a recurrence of his behavior.

Additionally, applicant has undergone counseling with several

HUGO L. VILORIA (19037)

mental health professionals, the latest of which testified before us that applicant is, at least from a psychological perspective, capable of resuming the practice of medicine.

Applicant has taken a substantial amount of CME and consults with physicians on at least a semi-regular basis so as to have a working knowledge of current medical practice. Given the appropriate supervised setting, it is my belief that applicant can practice safely without harm to the public, and indeed can render some good service.

Finally, the incident for which applicant lost his license, and even the subsequent ones, occurred long in the past. He has had no brush with the law for at least seven years and has led an exemplary life since then. Under these circumstances it serves no purpose to further punish applicant by denying him the right to practice medicine under certain supervised conditions.

Therefore, it is the recommendation of Dr. Kase that applicant's license be restored, provided that applicant's practice be subject to the terms of probation set forth in the annexed exhibit "A", which would limit applicant to the practice of adult primary care internal medicine only in medically supervised institutional settings such as Article 28 facilities for a period of three (3) years from the effective date of the Commissioner's Order to be issued in this case. During that time period applicant may not engage in any private practice. Following the satisfactory completion of these terms of probation, applicant may practice without restriction.

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Respectfully submitted,
Dr. Nathan Kase, Chairperson
Dr. Seymour Cohen
Benjamin Robinson, Esq.

REDACTED

Chairperson

Dated

EXHIBIT "A"

TERMS OF PROBATION
OF THE HEARING PANEL

HUGO L. VILORIA

CALENDAR NO. 19037

1. That applicant, during the period of probation, which shall run for three (3) years from the effective date of the Commissioner's Order to be issued in this matter, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower, Room 438, Empire State Plaza, Albany, NY 12237, of any employment and/or practice, applicant's residence, telephone number, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That applicant, during the period of probation, shall practice adult primary care internal medicine only in an Article 28 or similar facility under the supervision of a New York State licensed physician;
4. That, during the period of probation, applicant shall not engage in the private practice of medicine;
5. That applicant shall have quarterly performance reports submitted to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, from applicant's employer, evaluating applicant's performance in the practice of medicine in applicant's place of employment, said reports to be prepared by applicant's supervisor or employer;
6. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

HUGO L. VILORIA (19037)

7. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents, said proof of the above to be submitted no later than the first two months of the period of probation;
8. That applicant shall make quarterly visits to an employee of the Office of Professional Medical Conduct, New York State Department of Health, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the Office of Professional Medical Conduct, New York State Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents.

The University of the State of New York
Education Department



IN THE MATTER

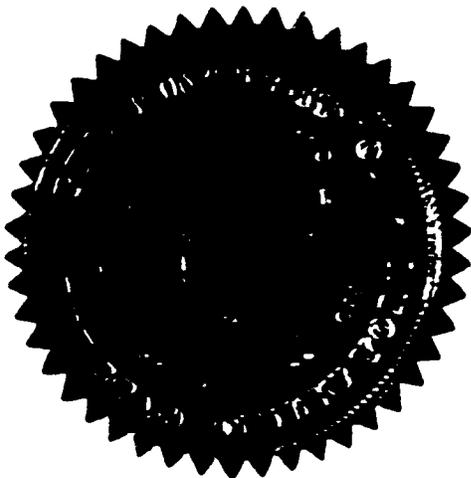
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Application of HUGO L. VILORIA
for restoration of his license to practice
medicine in the State of New York

Case No. 97-24-60R

It appearing that the application of HUGO L. VILORIA, 37-18 73rd Street, Jackson Heights, New York 11372, to engage in the practice of medicine in the State of New York, was revoked by action of the Board of Regents on June 17, 1988, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions to deny such petition, now, pursuant to action taken by the Board of Regents on April 29, 1997, it is hereby

ORDERED that the petition for restoration of License No. 119488, authorizing HUGO L. VILORIA to practice medicine in the State of New York, is denied.



IN WITNESS WHEREOF, I, RICHARD P. MILLS, Commissioner of Education of the State of New York, for and on behalf of the State Education Department, do hereunto set my hand and affix the seal of the State Education Department at the City of Albany, this 12th day of June, 1997.

REDACTED

Commissioner of Education

Case No. 97-24-60R

It appearing that the license of HUGO L. VILORIA, 37-18 73rd Street, Jackson Heights, New York 11372, to engage in the practice of medicine in the State of New York, having been revoked by action of the Board of Regents on June 17, 1988, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendation of the Committee on the Professions that the petition be denied, now, pursuant to action taken by the Board of Regents on April 29, 1997 it was

VOTED that the petition for restoration of License No. 119488, authorizing HUGO L. VILORIA to practice medicine in the State of New York, be denied.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions
Application for Restoration of Medical License

Re: Hugo L. Viloría

Attorney: Robert S. Asher

Hugo L. Viloría, REDACTED
petitioned for restoration of his medical license. The
chronology of events is as follows:

- 03/05/74 Issued license number 119488 to practice medicine in New York State.
- 03/13/87 License summarily suspended by Department of Health. (See "Disciplinary History.")
- 06/04/88 Regents Review Committee recommended that license be revoked.
- 06/17/88 Regents voted revocation.
- 08/16/88 Commissioner's Order effective.
- 06/14/89 First petition for restoration submitted.
- 06/08/90 Peer Panel restoration review.
- 07/30/90 Report of Peer Review Panel.
- 12/12/90 Report and recommendation of the Committee on the Professions.
- 02/22/91 Board of Regents voted to deny restoration.
- 05/01/91 Commissioner's Order effective.
- 06/02/94 Second petition for restoration submitted.
- 02/09/96 Peer Panel restoration review.
- 05/28/96 Report and recommendation of Peer Review Panel. (See "Recommendation of the Peer Review Panel.")
- 01/06/97 Report and recommendation of Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. (See attached report of the Regents Review Committee.) On March 13, 1987, the Commissioner of Health determined that Dr. Vilorio's continued practice of medicine constituted an imminent danger to the health of the people of the State of New York and issued an order summarily suspending his license. Dr. Vilorio was charged with professional misconduct in that he willfully harassed, abused and/or intimidated a patient physically and verbally (first through third specifications), that he engaged in conduct in the course of his practice as a physician which evidenced moral unfitness to practice the profession (fourth through sixth specifications), and that he practiced the profession fraudulently (seventh specification). The first two charges related to sexual conduct regarding a minor patient and the latter charge to altering a related patient record.

In April 1987 a hearing was conducted by the State Board for Professional Medical Conduct in regard to the issues of imminent danger and professional misconduct. Prior to final deliberations and a review of final written arguments, the Hearing Committee (Stewart, Sheldon, Winer) concluded that Dr. Vilorio's practice of medicine did not constitute an imminent danger to the health of the people of the State of New York. The Committee recommended unanimously that the summary order be vacated. On June 1, 1987, the Commissioner of Health rejected the findings, conclusion, and recommendation of the Hearing Committee on imminent danger and ordered that the summary suspension be continued.

In June 1987 the Hearing Committee found and concluded that Dr. Vilorio was guilty of the charges, either wholly or in part, and recommended that his license be revoked. On July 10, 1987, the Commissioner of Health recommended to the Board of Regents that the findings, conclusions, and recommendation of the Hearing Committee be accepted in full.

In its report of June 4, 1988, the Regents Review Committee (Griffith, Bolin, Picariello) unanimously recommended that Dr. Vilorio's license be revoked. The Committee recommended that Dr. Vilorio be found guilty of the third and sixth specifications to the extent indicated by the Hearing Committee and recommended further that he be found not guilty of the remaining charges. In giving consideration to the summary suspension, the Committee recommended that Dr. Vilorio be allowed to petition for restoration after a waiting period of nine months, instead of one year. On June 14, 1989, Dr. Vilorio submitted his first petition for restoration of his medical license.

The Peer Review Panel (Colgan, Cournos, Santiago) met on June 8, 1990. On July 30, 1990, the Panel recommended that Dr. Vilorio's petition for restoration of his medical license be denied. In its report dated December 12, 1990, the Committee on the Professions (Fernandez, Cantres, Sauer) recommended that Dr. Vilorio's petition be denied. On February 22, 1991, the Board of Regents voted to deny Dr. Vilorio's petition. The Commissioner's Order became effective on May 1, 1991. Dr. Vilorio submitted his second petition for restoration on June 2, 1994.

Recommendation of the Peer Review Panel. (See attached report of the Peer Review Panel.) The Peer Review Panel (Iraj, Roman, Wu) met on February 9, 1996. In its report dated May 28, 1996, the Panel recommended that the revocation of Dr. Viloría's license be stayed and that he be placed on probation for ten years under specified terms and conditions including the requirement that he always have a female third person present whenever he treats or examines any female and that within the first three years of probation he complete 100 hours of continuing medical education including at least one course in physician-patient relationships and another course in the general practice of medicine or internal medicine.

Recommendation of the Committee on the Professions. On January 6, 1997, the Committee on the Professions (Duncan-Poitier, Muñoz, Porter) met with Dr. Hugo L. Viloría to consider his petition for the restoration of his license as a physician in New York State. In his meeting with the Committee on the Professions on January 6, 1997, Dr. Viloría was accompanied by his attorney, Robert S. Asher. Dr. Viloría presented the Committee with a letter and Curriculum Vitae from Dr. Hugo M. Morales, Medical Director, Bronx Mental Health Center, regarding his treatment of Dr. Viloría.

The Committee began the meeting by asking Dr. Viloría to explain in his own words the circumstances that led to the revocation of his license. He told the Committee that he should not have talked to a patient the way he did, but it was only a part of his cultural background to attempt to get friendly with his patients, not to do something wrong. Dr. Viloría said that Spaniards are talkative about various subjects and that it was just part of the culture and "not that big a deal to have the conversation." However, Dr. Viloría reported that he was excited by the girl as she spoke about sex favors and sex problems. As a result, he reported that he lost control and forgot he was a doctor. Further, Dr. Viloría indicated that he failed to keep the proper distance between a doctor and a patient. He stated to the Committee that his conduct was his own fault.

Dr. Viloría volunteered to the Committee on the Professions his account of the office visit with the fourteen year old girl. He said he believed he had treated her two times previously, once for a health certificate for school and once for a cut finger. On this occasion, he reported that she had no appointment but, rather, had been hiding in a room and forced her way into the examining room without going through the receptionist. Dr. Viloría told the Committee that she said she wanted a medical certificate for not being in school. He stated that the girl initiated the sexual discussion and told him she would do anything for him if he gave her the certificate. Dr. Viloría informed the Committee that he tried to avoid her but she kept saying "Are you going to do it?" He stated that it was a mistake to continue the sexual discussion.

Mr. Asher asked the Committee if he could speak and presented a brief account of what he believed to be the facts surrounding the incident that led to the revocation of Dr. Vilorio's license. He indicated that in an effort to avoid truancy problems this girl was cooperating with the police, and Dr. Vilorio was being "set up." Mr. Asher explained that as part of this cooperation she was taping her conversation with Dr. Vilorio on the day she forced her way into one of his examining rooms. Dr. Vilorio told the Committee that the girl who accused him made up a story that he had touched her and told her not to go to school when she was found by the police in Harlem when she should have been in school. When the Committee asked how he knew the police had found her in Harlem, Dr. Vilorio replied that she had said so. Dr. Vilorio informed the Committee that during the meeting with her school principal the girl said that he held a gun to her head and told her to undress. He said that he was physically unable to do what she alleged. The record shows that subsequent to revocation of his license, Dr. Vilorio, in a plea bargaining arrangement, pleaded guilty to the crime of criminal possession of a weapon in the fourth degree and also to the crime of endangering the welfare of a child. The Court record states that "Additionally, the fact that the defendant's medical license was permanently revoked, and having had extensive discussions with the licensing people in New York State and given the information that we have, we do not believe the defendant will be eligible to receive his license if he applies for it. That was also considered in allowing this plea." In concluding his discussion of the incident, Dr. Vilorio stated to the Committee that "I can only say I did wrong by not stopping the conversation and keeping distance."

The Committee asked the petitioner if it was his practice to examine female patients without a nurse in the room. Dr. Vilorio said that if he needed to examine a female, he would call in a nurse. However, in this situation Dr. Vilorio indicated that he was just talking to the fourteen year old girl and filling out a certificate for her being out of school; he was not planning to examine her.

The Committee inquired as to the effects of his actions on the fourteen year old girl. Dr. Vilorio indicated that at first he only considered the negative effects on himself since he felt he had failed by not trying to tell her she was doing wrong. When asked his feelings now, he stated that he "didn't teach her to do good."

The petitioner indicated that he had volunteered to do more than 400 extra hours of community service in addition to the 600 hours ordered by the Court. Dr. Vilorio informed the Committee that he did volunteer work in a women's shelter and had no problems with any women while providing this assistance. Additionally, he indicated he has been keeping abreast of the profession by taking continuing education courses and reading medical journals.

Through one and one-half years of therapy with Dr. Sowala, Dr. Vilorio told the Committee that he had learned how to behave as

a doctor. He indicated that a psychologist, Dr. O'Rourke had informed him that there was nothing psychologically wrong with him. For the last six months, Dr. Viloría reports that he has been seeing Dr. Morales. In his letter dated January 6, 1996 (sic), Dr. Morales reported that he had last seen Dr. Viloría on December 11, 1996 for his monthly visit and that "during the psychotherapeutic session the focus has been on how to conduct a doctor/patient relationship in a most professional manner thereby avoiding conflicting personal issues ..." In addition, Dr. Viloría indicated that he has been consulting with his pastor, Monsignor McAlister.

The Office of Professional Medical Conduct of the Department of Health opposes the restoration of the medical license of Dr. Viloría. They state:

Dr. Viloría's petition for restoration indicates that he has continued to maintain his skills in medicine during this revocation period by taking continuing education courses. His petition, however, does not indicate remorse nor does it supply evidence of rehabilitation of the psychosexual disturbance that led to his revocation. Considering the tenor and explicitness of Dr. Viloría's behavior with a minor that constituted professional misconduct, there is no evidence to indicate that restoration of his license is appropriate.

In his first petition for restoration reviewed by a Committee on the Professions in 1990, Dr. Viloría's application was denied because the Committee believed, at that time, that he had a crucial flaw in his ability to assess and react to the events in his life. They indicated that "Dr. Viloría continues to blame his accuser, her mother and the police, and fails to take responsibility for his actions." They further stated that "Dr. Viloría continues to believe that the revocation of his license was improper and incorrect and that the real tragedy has occurred to him and his family."

The overarching concern in all restoration cases is the protection of the public. A former licensee petitioning for restoration has the significant burden of satisfying the Board of Regents that licensure should be granted in the face of misconduct that resulted in the loss of licensure. There must be a clear preponderance of evidence that the misconduct will not recur and that the root causes of the misconduct have been addressed and satisfactorily dealt with by the petitioner.

The Committee on the Professions concurs with the observation of the Peer Review Panel that the petitioner has been sufficiently re-educated and has demonstrated his competency and desire to remain current with professional developments. Similarly, the Committee acknowledges Dr. Viloría's attempts at rehabilitation through therapy, religious consultation, and volunteer work in a shelter. He admits that what he did was wrong but only as it

pertains to his not stopping the conversation and keeping his distance as a doctor with the patient.

The Committee, however, does not agree with the observations of the Peer Review Panel that the applicant's declarations of remorse seem sincere and deeply felt and that through his efforts at rehabilitation he has gained much insight and understanding about himself. Rather, the Committee feels that Dr. Viloría has no real recognition of what occurred and has not accepted full responsibility for his actions. Regardless of how the sexual discussion began, he not only continued the discussion but accelerated it. The Committee believes it would be wrong for any responsible adult to continue such a conversation. Dr. Viloría did not convince the Committee that he was fully aware of the serious effects his actions may have had on the fourteen year old patient. The Committee notes that the Peer Review Panel recommended restoration, but the Panel also recommended the unusually long probation period of 10 years and the stipulation that a female third person be always present with the applicant whenever he treats or examines any female patient. This Committee disagrees with the Peer Review Panel's conclusion that Dr. Viloría should be allowed to return to practice. It finds the extensive probationary period recommended by the Peer Review Panel to be indicative of that Panel's ongoing concern about Dr. Viloría's readiness to return to the practice of medicine. The Committee does not find Dr. Viloría's rehabilitation to be sufficient to warrant the reissue of a license to practice medicine given the seriousness of petitioner's offense and the age of the victim. Furthermore, the Committee was not convinced from its review of the record and its personal meeting with Dr. Viloría that he has developed sufficient insight into the seriousness of his misconduct and its implications.

After a complete review of the record and its meeting with Dr. Viloría on January 6, 1997, the Committee on the Professions voted unanimously to recommend that Dr. Viloría's petition for the restoration of his license as a physician be denied at this time.

Johanna Duncan-Poitier, Chair

Frank Muñoz

Joseph B. Porter

EXHIBIT "A"

TERMS OF PROBATION
OF THE HEARING PANEL

HUGO L. VILORIA

CALENDAR NO. 19037

1. That applicant, during the period of probation, which shall run for three (3) years from the effective date of the Commissioner's Order to be issued in this matter, shall be in compliance with the standards of conduct prescribed by the law governing applicant's profession;
2. That applicant shall submit written notification to the Director, Office of Professional Medical Conduct (OPMC), Corning Tower, Room 438, Empire State Plaza, Albany, NY 12237, of any employment and/or practice, applicant's residence, telephone number, or mailing address, and of any change in applicant's employment, practice, residence, telephone number, or mailing address within or without the State of New York;
3. That applicant, during the period of probation, shall practice adult primary care internal medicine only in an Article 28 or similar facility under the supervision of a New York State licensed physician;
4. That, during the period of probation, applicant shall not engage in the private practice of medicine;
5. That applicant shall have quarterly performance reports submitted to the Department of Health (DOH), addressed to the Director, OPMC, as aforesaid, from applicant's employer, evaluating applicant's performance in the practice of medicine in applicant's place of employment, said reports to be prepared by applicant's supervisor or employer;
6. That applicant shall submit written proof from the Division of Professional Licensing Services (DPLS), New York State Education Department (NYSED), that applicant has paid all registration fees due and owing to the NYSED and applicant shall cooperate with and submit whatever papers are requested by DPLS in regard to said registration fees, said proof from DPLS to be submitted by applicant to DOH, addressed to the Director, OPMC, as aforesaid, no later than the first three months of the period of probation;

HUGO L. VILORIA (19037)

7. That applicant shall submit written proof to the DOH, addressed to the Director, OPMC, as aforesaid, that 1) applicant is currently registered with the NYSED, unless applicant submits written proof that applicant has advised DPLS, NYSED, that applicant is not engaging in the practice of applicant's profession in the State of New York and does not desire to register, and that 2) applicant has paid any fines which may have previously been imposed upon applicant by the Board of Regents, said proof of the above to be submitted no later than the first two months of the period of probation;
8. That applicant shall make quarterly visits to an employee of the Office of Professional Medical Conduct, New York State Department of Health, unless otherwise agreed to by said employee, for the purpose of said employee monitoring applicant's terms of probation to assure compliance therewith, and applicant shall cooperate with said employee, including the submission of information requested by said employee, regarding the aforesaid monitoring;
9. That upon receipt of evidence of noncompliance with or any other violation of any of the aforementioned terms of probation, the Office of Professional Medical Conduct, New York State Department of Health may initiate a violation of probation proceeding and/or such other proceedings pursuant to the Education Law and/or Rules of the Board of Regents.

The University of the State of New York
Education  Department

IN THE MATTER

of the

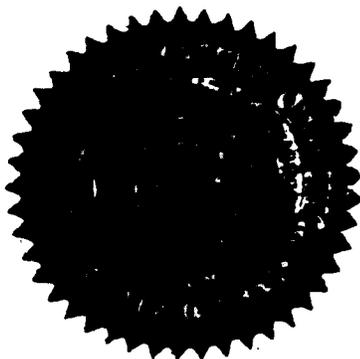
Application of HUGO L. VILORIA
for restoration of his license to practice
medicine in the State of New York

Case No. 91-70-60R

It appearing that the license of HUGO L. VILORIA, 37-18 73rd Street, Jackson Heights, New York, 11372, to engage in the practice of medicine in the State of New York, was revoked by action of the Board of Regents on June 17, 1988, and he having petitioned the Board of Regents for restoration of said license, and the Regents having given consideration to said petition, and having agreed with and accepted the recommendations of the Peer Review Panel of the State Board for Medicine and the Committee on the Professions, now, pursuant to action taken by the Board of Regents on February 22, 1991, it is hereby

ORDERED that the recommendations of the Peer Review Panel and the Committee on the Professions are accepted, and that the petition for restoration of license No. 119488, authorizing HUGO L. VILORIA, to practice medicine in the State of New York, is denied.

IN WITNESS WHEREOF, I, THOMAS SOBOL,
Commissioner of Education of the State of New
York, for and on behalf of the State Education
Department, do hereunto set my hand and affix
the seal of the State Education Department at
the City of Albany, this 5th day of April, 1991.



REDACTED
Commissioner of Education

Case No. 91-70-60R

It appearing that the license of HUGO L. VILORIA, REDACTED

to practice medicine in the State of New York, having been revoked by action of the Board of Regents on June 17, 1988, and said HUGO L. VILORIA having petitioned the Regents for restoration of said license, and the Regents having given consideration to said petition, now, pursuant to action taken by the Board of Regents on February 22, 1991, it was

VOTED that the recommendations of the Peer Review Panel of the State Board for Medicine and the Committee on the Professions be accepted, that the petition for restoration of license no. 119488 authorizing HUGO L. VILORIA to practice medicine in the State of New York be denied.

THE UNIVERSITY OF THE STATE OF NEW YORK
The State Education Department

Report of the Committee on the Professions

Re: Hugo L. Viloría

REDACTED

Hugo L. Viloría petitioned for restoration of his license to practice medicine which was revoked, effective August 16, 1988. The chronology of events is as follows:

- 03/05/74 Licensed to practice medicine in New York State.
- 03/17/87 License summarily suspended by Department of Health.
- 06/04/88 Regents Review Committee recommended that license be revoked. (See "Disciplinary History.")
- 06/17/88 Regents voted revocation.
- 08/16/88 Commissioner's Order effective.
- 06/14/89 Petition for restoration submitted. (See "Petition for Restoration.")
- 06/08/90 Peer Panel restoration review. (See "Report and Recommendation of Peer Review Panel.")
- 07/30/90 Report of Peer Review Panel.
- 12/12/90 Report of personal appearance and recommendation of the Committee on the Professions. (See "Recommendation of the Committee on the Professions.")

Disciplinary History. On March 13, 1987 the Commissioner of Health determined that Dr. Viloría's continued practice of medicine constituted an imminent danger to the health of the people of the State of New York and issued an order summarily suspending his license. Dr. Viloría was charged with professional misconduct in that he willfully harassed, abused and/or intimidated a patient physically and verbally (first through third specifications) and that he engaged in conduct in the course of his practice as a physician which evidenced moral unfitness to practice the profession (fourth through sixth specifications) and with practicing the profession fraudulently (seventh specification.) The former two charges related

to sexual conduct regarding a minor patient and the latter charge to altering a related patient record.

In April 1987 a hearing was conducted in regard to the issues of imminent danger and professional misconduct. Prior to final deliberations and a review of final written arguments, the Hearing Committee (Stewart, Sheldon, Winer) of the State Board for Professional Medical Conduct concluded that Dr. Vilorio's practice of medicine did not constitute an imminent danger to the health of the people of the State of New York. The Committee recommended unanimously that the summary order be vacated. On June 1, 1987 the Commissioner of Health rejected the findings, conclusion, and recommendation of the Hearing Committee on imminent danger and ordered that the summary suspension be continued.

In June 1987 the Hearing Committee found and concluded that Dr. Vilorio was guilty of the charges either wholly or in part and recommended that his license be revoked. On July 10, 1987 the Commissioner of Health recommended to the Board of Regents that the findings, conclusions, and recommendation of the Hearing Committee be accepted in full.

In their report of June 4, 1988, the Regents Review Committee (Griffith, Bolin, Picariello) recommended unanimously that Dr. Vilorio's license be revoked. They recommended that Dr. Vilorio be found guilty of the third and sixth specifications to the extent indicated by the Hearing Committee and recommended further that he be found not guilty of the remaining charges. In giving consideration to the summary suspension, the Committee recommended that Dr. Vilorio be allowed to petition for restoration after a waiting period of nine months, instead of one year.

Petition for Restoration. In his petition for restoration, dated June 14, 1989, Dr. Vilorio recounted the events that took place which resulted in the revocation of his license. Throughout his detailed account of these events Dr. Vilorio declared his innocence and insisted that the accusations of the minor patient were false and that he had been set up by the police. Dr. Vilorio compared the situation to that of the "Twana (sic) Brawley case."

Dr. Vilorio's petition attempted to reargue the various proceedings which took place and ultimately led to the revocation. He described the proceedings and expressed his objections to witnesses presented by the Health Department, the reversal of the charge of imminent danger, his questioning by the police, the conclusions of the Hearing Committee etc. Dr. Vilorio detailed the criminal charges and explained that he "described the results of the criminal case because I thought you should be fully informed of all the circumstances."

Dr. Vilorio said that he feels he has received more than sufficient punishment and that the factors which led to the revocation will never recur. Dr. Vilorio stated that he will never attend a

female patient without a witness present and that there has never before been a complaint relating to his competency to practice medicine.

Additional Information. The routine investigation by the Office of Professional Discipline disclosed that in 1987 Dr. Viloría was indicted on several criminal charges including attempted rape, sexual abuse, sodomy, criminal use of a firearm, criminal possession of a weapon, endangering the welfare of a child, attempted sodomy and violation of the public health law. On April 17, 1989 Dr. Viloría was sentenced to six months imprisonment and five years probation after a jury trial which found him guilty of sodomy, endangering the welfare of a child, and criminal possession of a loaded weapon.

On July 12, 1989 Susan Lee Strauss, Assistant District Attorney, wrote to the Office of Professional Discipline and saying that she was "violently opposed" to the restoration of Dr. Viloría's license. She asserted that he "is afflicted with very bizarre sexual and criminal behavior and should be treated in accordance with his actions." Ms. Strauss included copies of a pre-sentence memorandum, probation report, and letters submitted to the court.

Kathleen Tanner, Director of the Office of Professional Medical Conduct, Department of Health, submitted two letters opposing the restoration of Dr. Viloría's license.

On October 25, 1989 Dr. Viloría submitted a notarized statement in which he wished to clarify statements that he had made which might be construed as practicing medicine without a license. Dr. Viloría cited his various activities since the revocation. Dr. Viloría asked that his letter of August 2, 1989 to the Office of Professional Discipline be disregarded as he "wrote that letter without the help of someone who has a better grasp of the English language and without the benefit of advice of counsel."

Report and Recommendation of Peer Review Panel. The Peer Review Panel (Colgan, Cournos, Santiago) report, dated July 30, 1990, indicated that they met on June 8, 1990. Dr. Viloría appeared personally and was represented by Arnold T. Taub, Esq.

The Peer Panel report reviewed Dr. Viloría's disciplinary history and his petition for restoration.

Mr. Taub began by stating that Dr. Viloría is competent to practice and that his past punishment has been sufficient. The Department representative, Mr. Stephen Lazzaro, Esq., contended that there has been no remorse, that Dr. Viloría's reeducation has been inadequate and that there has been insufficient rehabilitation. Mr. Lazzaro noted that the Department, the Office of Professional Medical Conduct and the District Attorney's Office all agree that restoration should be denied.

Dr. Vilorio testified that he had been working for thirteen years in poor areas without problems or complaints. Dr. Vilorio said that after the incident at issue he had difficulty getting a job. He indicated that he couldn't get a job in the medical field and that his physical condition and age limit his ability for physical labor.

Dr. Vilorio listed his efforts at continuing medical education citing various magazines that he received, listening to "PRN" medical news on the radio, and conferences he has attended. He noted that the physician who took over his office confers with him regarding his former patients' medical histories. Dr. Vilorio discussed his medical background, his distinguished career in surgery in his native Columbia, his attempts at helping poor people, and in support of these statements he referred to his income from his medical practice as only sixty to eighty thousand dollars per year.

Responding to questions regarding the underlying incident, Dr. Vilorio said that he believes it was wrong to hold the type of conversation he did with a minor, even if she was the aggressor. Continuing, he said that he thinks the whole case was misinterpreted, that the way in which he handled the situation was not to do any harm, or anything to the girl, referring to the fact that he had no reason to want to hurt her. Dr. Vilorio explained that the patient had been receiving psychiatric treatment for sexual abuse and proceeded to depict the circumstances of the visit which formed the basis for the tape recorded conversation. He said that he had been surprised to see her in his office as she had not been shown in and attributed everything to her mental problem. He contended that he tried to tell her that he was too busy but was unable to kick her out because he is not a violent person. He then proceeded to give a detailed explanation as to why he could not call her mother. Dr. Vilorio asserted that he said the things on the tape in order to humor her, get rid of her, and not to antagonize her. He said that he just went along with whatever she said and gave an example of a delusional patient saying that you should just go along with it.

When asked why he had not called in his female office assistant, Dr. Vilorio said that he did not do it because the patient did not need an examination and he did not feel that he needed any help in getting the patient out of his office as she was not abusive and his life was not in danger so neither did he call the police.

Contending that the revocation was improper and incorrect, Dr. Vilorio said that the only victims were him and his family who have lost their house and have no food to eat.

Mr. Taub then spoke regarding Dr. Vilorio's language problem and his inability to admit that he has a language problem. He asked how Dr. Vilorio was to show remorse when the girl had perjured herself. He stated that Dr. Vilorio does feel remorse in that the strategy he used was wrong and he now knows the right thing to do and has indicated the steps that he will take to prevent it from happening

again. Continuing, Mr. Taub stated that, even if it is assumed that Dr. Viloría's explanations are not accepted, petitioner's crime is not serious enough to have his license revoked forever. He reiterated that Dr. Viloría was trapped by the police, that the patient had been the aggressor, and again asked what remorse could be expected from a doctor who faced three years of hell, facing his children, and his wife who did not know what happened. Mr. Taub maintained that even if Dr. Viloría was one hundred percent guilty of the charges, he had been punished enough and that compassion indicates that petitioner should get his license back.

In closing, Mr. Lazzaro asserted that Dr. Viloría does not understand the meaning of his acts and referred to the remorse that petitioner feels only for himself and his family. Mr. Lazzaro maintained that there has been no rehabilitative behavior and reminded the Panel that the Board of Regents considered the charges very seriously. Finally, he referred to the Panel's responsibility towards the public even if sympathy is felt for Dr. Viloría's family and again recommended against restoration.

After taking the entire relevant record into consideration, the Peer Panel noted that their conclusion was based solely on the determination of the Board of Regents and Dr. Viloría's subsequent conduct, not on the allegations contained in the criminal material or on the disposition of that matter.

The Panel found confirmation of a crucial flaw in Dr. Viloría's ability to assess and react to events in his life as he appeared to cling to the same explanations that he offered in defense of the original disciplinary charges. The Panel found that even if they were to assume that all that Dr. Viloría had said regarding the character of the patient and her actions are true, they believed that his response, for which he was disciplined, was totally inappropriate and unprofessional. Moreover, they felt that while he admits that his judgement was faulty, Dr. Viloría does not fully understand in what way this is so, nor does he comprehend the harm which his conduct could cause. Additionally, they found that his explanations for his comments to the patient were inconsistent. Finally, they noted that Dr. Viloría was contending that his blame, if any, rests on his unsound assessment of the situation with the patient but that he has taken no steps to address the problem in his re-education or rehabilitation, nor has he submitted any evidence that he has sought any psychological testing or treatment. Therefore, they unanimously recommended that the restoration of Dr. Viloría's license to practice medicine be denied.

Recommendation of the Committee on the Professions. Dr. Viloría appeared before the Committee on the Professions (Fernandez, Cantres, Sauer) on December 12, 1990. Mr. Fernandez began the meeting by asking Dr. Viloría if he wanted to postpone this meeting until his attorney could be present. Dr. Viloría stated that he wished to proceed.

On March 17, 1987 Dr. Vilorio's license to practice as a physician in New York was suspended by the Department of Health. On June 17, 1988 the Board of Regents voted to revoke Dr. Vilorio's license, finding that he willfully harassed, abused and/or intimidated a patient physically and verbally and that his conduct evidenced moral unfitness to practice the profession.

On June 14, 1989, Dr. Vilorio applied for the restoration of his license. In a report dated July 30, 1990, the Peer Review Panel recommended that Dr. Vilorio's application be denied.

In his appearance before the Committee on the Professions, Dr. Vilorio contended that he was not guilty of the charges (both criminal and administrative) brought against him and that the chief witness against him lied about what had happened in his office. Dr. Vilorio continues to believe that the revocation of his license was improper and incorrect and that the real tragedy has occurred to him and his family.

The Committee on the Professions concurs with the finding of the Peer Review Panel that Dr. Vilorio has a crucial flaw in his ability to assess and react to events in his life. Dr. Vilorio has not gained any insight from the prior disciplinary proceeding. Dr. Vilorio continues to blame his accuser, her mother and the police, and fails to take responsibility for his actions. His failure to accept responsibility for his actions compels the conclusion that he should not have his license restored. The Committee on the Professions unanimously recommends that Dr. Vilorio's application for restoration of his license to practice medicine be denied.

Henry A. Fernandez, Chair

Lizette A. Cantres

Richard J. Sauer



The University of the State of New York

IN THE MATTER

OF

HUGO L. VILORIA
(Physician)

ORIGINAL ORDER
NO. 7840

Upon the report of the Regents Review Committee, under Calendar No. 7840, the record herein, the vote of the Board of Regents on June 17, 1988, and in accordance with the provisions of Title VIII of the Education Law, which report and vote are incorporated herein and made a part hereof, it is

ORDERED that, in the matter of HUGO L. VILORIA, respondent, the findings of fact of the Hearing Committee of the State Board for Professional Medical Conduct be accepted except that finding number 11 not be accepted; that the conclusions of the Hearing Committee as to the question of guilt of the respondent be accepted; that the recommendation of the Hearing Committee as to the measure of discipline be accepted; that the recommendation of the Commissioner of Health as to the findings of fact of the Hearing Committee be accepted except that finding number 11 not be accepted; that the recommendation of the Commissioner of Health as to the conclusions of the Hearing Committee as to the question of guilt of the respondent be accepted; that the recommendation of the Commissioner of Health as to the measure of discipline

HUGO L. VILORIA (7840)

Recommended by the Hearing Committee be accepted, that the recommendations of the Regents Review Committee be accepted; that respondent is guilty, by a preponderance of the evidence, of the third and sixth specifications to the extent indicated by the hearing committee and respondent is not guilty of the remaining charges; that respondent's license to practice as a physician in the State of New York be revoked upon each specification of which respondent was found guilty; and that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license, but said application shall not be granted automatically and that, in this regard, giving consideration to the summary suspension order in effect prior and subsequent to the meeting of the Regents Review Committee, which is not passed upon, respondent may apply for restoration of respondent's license after nine months has elapsed from the effective date of the service of this order in lieu of the one year waiting period stated in Rule 24.7(b).



IN WITNESS WHEREOF, I, Thomas Sobol,
Commissioner of Education of the State
of New York, for and on behalf of the
State Education Department and the Board
of Regents, do hereunto set my hand and
affix the seal of the State Education
Department, at the City of Albany, this
12th day of July, 1988.

REDACTED

Commissioner of Education

Approved June 17, 1988

No. 7840

Upon the report of the Regents Review Committee, under Calendar No. 7840, the record herein, and in accordance with the provisions of Title VIII of the Education Law, it was

Voted: That, in the matter of HUGO L. VILORIA, respondent, the findings of fact of the Hearing Committee of the State Board for Professional Medical Conduct be accepted except that finding number 11 not be accepted; that the conclusions of the Hearing Committee as to the question of guilt of the respondent be accepted; that the recommendation of the Hearing Committee as to the measure of discipline be accepted; that the recommendation of the Commissioner of Health as to the findings of fact of the Hearing Committee be accepted except that finding number 11 not be accepted; that the recommendation of the Commissioner of Health as to the conclusions of the Hearing Committee as to the question of guilt of the respondent be accepted; that the recommendation of the Commissioner of Health as to the measure of discipline recommended by the Hearing Committee be accepted; that the recommendations of the Regents Review Committee be accepted; that respondent is guilty, by a preponderance of the evidence, of the third and sixth specifications to the extent indicated by the hearing committee and respondent is not guilty of the remaining charges; that respondent's license to practice as a physician in the State of New York be revoked upon each specification of which respondent was found guilty; that respondent may, pursuant to Rule 24.7(b) of the Rules of the Board of Regents, apply for

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restoration of said license, but said application shall not be granted automatically and that, in this regard, giving consideration to the summary suspension order in effect prior and subsequent to the meeting of the Regents Review Committee, which is not passed upon, respondent may apply for restoration of respondent's license after nine months has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein in lieu of the one year waiting period stated in Rule 24.7(b); and that the Commissioner of Education be empowered to execute, for and on behalf of the Board of Regents, all orders necessary to carry out the terms of this vote.



The University of the State of New York

IN THE MATTER

of the

Disciplinary Proceeding

against

HUGO L. VILORIA

No. 7840

who is currently licensed to practice as
a physician in the State of New York.

Report of the Regents Review Committee

HUGO L. VILORIA, hereinafter referred to as respondent, was licensed to practice as a physician in the State of New York by the New York State Education Department.

This disciplinary proceeding was properly commenced.

On March 13, 1987, the Commissioner of Health determined that respondent's continued practice of medicine constitutes an imminent danger to the health of the people of the State of New York and ordered respondent to cease the practice of medicine in the State of New York immediately.

A copy of the Order of the Commissioner of Health and notice of hearing is annexed hereto, made a part hereof, and marked as Exhibit "A". A copy of the statement of charges and amended statement of charges are annexed hereto, made a part hereof, and marked as Exhibit "B".

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On April 1, 1987 and April 21, 1987, a hearing was conducted in regard to the issues of imminent danger to the health of the people of the State of New York and of professional misconduct.

After the hearing concluded, but prior to final deliberations and a review of final written arguments, the hearing committee of the State Board for Professional Medical Conduct found, in its report dated May 11, 1987, that petitioner did not prove all of the material allegations by a preponderance of the evidence and concluded that respondent's practice of medicine in the State of New York does not constitute an imminent danger to the health of the people of the State of New York. Accordingly, the hearing committee unanimously recommended that the summary order of the Commissioner of Health be vacated. A copy of the report by the hearing committee with regard to imminent danger is annexed hereto, made a part hereof, and marked as Exhibit "C".

On June 1, 1987, the Commissioner of Health rejected the findings, conclusion, and recommendation of the hearing committee on imminent danger and ordered that the summary suspension be continued. A copy of the June 1, 1987 order of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "D".

The hearing committee rendered a report of its findings, conclusions, and recommendation, a copy of which is annexed hereto, made a part hereof, and marked as Exhibit "E".

The hearing committee found and concluded that respondent was

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guilty of the seventh specification of the charges, guilty to the extent indicated in its report of the third and sixth specifications of the charges, and not guilty of the first, second, fourth, and fifth specifications the charges, and recommended that respondent's license to practice as a physician in the State of New York be revoked.

The Commissioner of Health recommended to the Board of Regents that the findings, conclusions, and recommendation of the hearing committee in regard to professional misconduct be accepted in full. A copy of the recommendation of the Commissioner of Health is annexed hereto, made a part hereof, and marked as Exhibit "F".

On October 27, 1987, respondent appeared before us and was represented by his attorney Arnold Taub, Esq., who presented oral argument on behalf of respondent. Claudia Morales, Esq., presented oral argument on behalf of the Department of Health.

Initially, we were not furnished with the tapes in petitioner's Exhibits 5 and 7. Upon request, we were furnished on January 28, 1988 with both of these Exhibits. Both parties were informed that this Committee would listen to Exhibit 5 on February 1, 1988 and would allow both parties to be present and to identify the segments of the tape which they contend are most significant. On February 1, 1988, this Committee listened to the audio tape of Exhibit 5 in the presence of petitioner's counsel. Respondent's counsel did not attend this session.

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We have considered the record transferred by the Commissioner of Health, including the above exhibits. We note that respondent's attorney has informed us that he was satisfied that no unfairness took place on February 1, 1988 when the audiotape was played with petitioner's attorney present. Respondent's attorney declined the further opportunity to be present for the playing of that audiotape on April 29, 1988. The videotape was viewed by us with neither attorney present. Accordingly, the entire audio and video tapes were played and viewed by this Committee without further oral argument or presentation by the parties. Various correspondence relating to the audio and video tapes are deemed part of this record as this Committee's Exhibits "1" through "8".

Respondent was charged with unprofessional conduct in that he willfully harassed, abused and/or intimidated a patient physically and verbally (first through third specifications of the charges), unprofessional conduct in that his conduct in the course of his practice as a physician evidences moral unfitness to practice the profession (fourth through sixth specifications of the charges), and practicing the profession of medicine fraudulently (seventh specification of the charges). All of the charges relate to patient A.

With respect to the unprofessional conduct charges, the hearing committee recommended that respondent be found guilty of the third and sixth specifications of the charges because

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respondent's actions on January 21, 1987 constituted verbal harassment, abuse and intimidation and because, by formulating the intent to engage in a sexual encounter with Patient A, respondent's conduct evidences moral unfitness to practice medicine. The hearing committee also recommended that respondent be found not guilty, as charged in the remaining specifications of the charges involving unprofessional conduct, because the respondent did not physically force Patient A to have sex and respondent's conduct did not constitute physical harassment, abuse and/or intimidation of Patient A.

Early in the conversation on January 21, 1987, respondent twice told Patient A that he missed her. He then asked Patient A why she did not come to his office. When Patient A asked respondent whether he liked what they were doing the other times, respondent replied yes of course. Later respondent stated we can go somewhere and indicated he would pick her up. Respondent declared to this 14-year old girl "I want to give you everything. All my love. I like you". After falsely telling Patient A that he no longer had a wife, respondent twice inquired of Patient A about a certain type of sex act (finding number 8).

We agree with the hearing committee that respondent's statements, tape recorded on January 21, 1987, show that respondent was seeking a sexual encounter (See hearing committee finding number 8). After Patient A had previously been sexually aggressive with respondent, respondent made the above remarks on

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January 21, 1987. As the hearing committee indicated in its report, respondent should have immediately terminated the conversation relating to sex. Accordingly, respondent willfully harassed, abused and/or intimidated Patient A verbally but not physically on January 21, 1987.

With respect to the seventh specification charging respondent with practicing the profession of medicine fraudulently, petitioner has not proven this charge. In our unanimous opinion, this charge cannot be sustained, by a preponderance of the evidence, by any reading of this record.

We unanimously recommend to the Board of Regents that the findings and conclusions of the hearing committee and the recommendation of the Commissioner of Health as to those findings and conclusions be accepted, except that finding number 11 not be accepted.

We unanimously recommend that respondent be found guilty, by a preponderance of the evidence, of the third and sixth specifications to the extent indicated by the hearing committee and respondent be found not guilty of the remaining charges.

We also unanimously recommend to the Board of Regents that the recommendation as to the measure of discipline of the hearing committee and of the Commissioner of Health be accepted and that respondent's license to practice medicine in the State of New York be revoked upon each specification of the charges of which we recommend respondent be found guilty. Respondent may, pursuant to

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Rule 24.7(b) of the Rules of the Board of Regents, apply for restoration of said license; but said application shall not be granted automatically. In this regard, we unanimously recommend that, giving consideration to the summary suspension order in effect prior and subsequent to our meeting, upon which we do not pass, respondent may apply for restoration of respondent's license after nine months has elapsed from the effective date of the service of the order of the Commissioner of Education to be issued herein in lieu of the one year waiting period stated in said Rule.

Respectfully submitted,

EMLYN I. GRIFFITH

JANE M. BOLIN

PATRICK J. PICARIELLO

REDACTED

~~Chairperson~~

Dated:

6/4/58